

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 38-07, Moderately Priced Housing - Amendments

Bill 38-07, Moderately Priced Housing - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on December 11, 2007. A public hearing is tentatively scheduled for January 29 at 7:30 p.m.

Bill 38-07 would revise the standards for setting sales prices for moderately priced dwelling units (MPDUs). The bill would also repeal the authority of the Director of the Department of Housing and Community Affairs to allow an applicant to pay into the Housing Initiative Fund instead of building MPDUs in a proposed subdivision. In addition, the bill would revise the control periods for the sale or rent of MPDUs, the standards for building certain MPDUs in alternative locations, and various other standards and procedures in the MPDU law. Before the hearing on this Bill, Council staff will ask DHCA staff for a more complete explanation of the specific amendments proposed.

This packet contains

Bill 38-07  
Legislative Request Report  
Memo from County Executive

Circle

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Bill No. 38-07  
Concerning: Moderately Priced Housing  
- Amendments  
Revised: 12-6-07 Draft No. 2  
Introduced: December 11, 2007  
Expires: June 11, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

### AN ACT to:

- (1) revise the standards for setting sales prices for moderately priced dwelling units (MPDUs);
- (2) repeal the authority of the Director of the Department of Housing and Community Affairs to allow an applicant to pay into the Housing Initiative Fund instead of building MPDUs in a proposed subdivision;
- (3) revise the control periods for the sale or rent of MPDUs;
- (4) revise the standards for building certain MPDUs in alternative locations; and
- (5) revise other standards and procedures for, and generally amend County law governing, the moderately priced dwelling unit program.

### By amending

Montgomery County Code  
Chapter 25A, Housing, Moderately Priced  
Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, 25A-10, and  
25A-12

### By repealing

Section 25A-5A

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, 25A-10, and 25A-12 are amendedd, and Section 25A-5A is repealed, as follows:**

**25A-2. Declaration of Public Policy.**

The County Council hereby declares it to be the public policy of the County

to:

- (1) Implement the [Montgomery] County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and [family] household sizes;

\* \* \*

- (3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans, and dispersed within each individual subdivision;

- (4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into [such] moderately priced housing; and

- (5) Require that all subdivisions of [35] 20 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to [family] household needs, and encourage subdivisions with fewer than [35] 20 units to do the same[;].

- [(6) Ensure that private developers constructing moderately priced dwelling-units under this Chapter incur no loss or penalty as a result

thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards;

- (7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund.]

### 25A-3. Definitions.

\* \* \*

- (g) Control period means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. [The control period is 30 years for sale units and 99 years for rental units, and begins on the date of initial sale or rental. If a sale MPDU is sold to an eligible person within 30 years after its initial sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the unit was originally offered for sale after March 1, 2002, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.]

(1) For an MPDU originally offered for sale or rent before March 1, 2002:

(A) the control period for each sale MPDU is 10 years after the date of the original purchase; and

(B) the control period for each rental MPDU is 20 years after the date of original rental.

(2) For an MPDU originally offered for sale or rent in a Growth Policy area before March 1, 2002:

(A) the control period for each sale MPDU is 15 years after the date of the original purchase; and

(B) the control period for each rental MPDU is 15 years after the date of original rental.

(3) For an MPDU originally offered for sale or rent between March 1, 2002 and March 31, 2005:

(A) the control period for each sale MPDU is 10 years after the original settlement date and 10 years after the settlement date of each later sale if that sale occurs during the existing control period; and

(B) the control period for each rental MPDU is 20 years after the date of original rental.

(4) For an MPDU originally offered for sale or rent on or after April 1, 2005:

(A) the control period for each sale MPDU is 30 years after the date of the original purchase and 30 years after the settlement date of each later sale if that sale occurs during the existing control period; and

(B) the control period for each rental unit is 99 years after the date of original rental.

(h) Date of original [sale] purchase means the date of settlement [for purchase of a moderately priced dwelling unit].

\* \* \*

(l) Dwelling unit means a building or part of a building that provides complete living facilities for one [family] household, including at a minimum facilities for cooking, sanitation, and sleeping.

(m) Eligible [person] buyer means a [person or] household whose income qualifies the [person or] household to [participate] buy a sale unit in the MPDU program, and who holds a valid certificate of eligibility from the Department which entitles the [person or] household to buy [or rent] an MPDU during the priority marketing period.

(n) Eligible renter means a household whose income qualifies the household to rent a unit in the MPDU program.

(o) High rise building means any multiple-family residential or mixed-use building that is higher than 4 stories.

[(n)] (p) Housing Initiative Fund means a fund established by the County Executive to achieve the purposes of Section 25B-9.

[(o)] (q) Low income means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by [executive regulations] regulation.

[(p)] (r) Moderate income means those levels of income, established [in executive regulations] by regulation, which prohibit or severely limit the financial ability of persons to buy or rent housing in [Montgomery] the County.

99            ~~[(q)]~~(s) Moderately priced dwelling unit or MPDU means a dwelling unit  
100            which is:

101            (1)    offered for sale or rent to eligible ~~[persons]~~ buyers or renters  
102            through the Department, and sold or rented under this Chapter;  
103            or

104            (2)    sold or rented under a government program designed to assist  
105            the construction or occupancy of housing for ~~[families]~~  
106            households of low or moderate income, and designated by the  
107            Director as an MPDU.

108            ~~[(r)]~~(t) Optional density bonus provision means any increase in density  
109            under Chapter 59, in a zoning classification that allows residential  
110            development, above the amount permitted in the base or standard  
111            method of development density, whether by exercise of the optional  
112            provisions of Chapter 59 or by any special exception.

113            ~~[(s)]~~(u) Planning Board means the Montgomery County Planning Board.

114            (v)    Planning Area means a geographic area of the County defined in the  
115            County's Growth Policy.

116            (w)    Policy Area means a geographic area of the County defined in the  
117            County's Growth Policy.

118            ~~[(t)]~~ (x) Priority marketing period is the period an MPDU must be offered  
119            exclusively for sale or rent to eligible ~~[persons]~~ buyers or renters, as  
120            provided in Section 25A-8.

121    **25A-4.    Income and eligibility standards.**

(a) The County Executive must set and annually revise standards of eligibility for the MPDU program by regulation. These standards must specify moderate-income levels for varying sizes of households which will qualify a [person or] household to buy or rent an MPDU. The Executive [must] may set different income eligibility standards for buyers and renters and for age-restricted housing. [The Executive may set different income eligibility standards for buyers and renters of higher-cost or age-restricted housing, as defined by regulation.]

(b) In establishing standards of eligibility and moderate-income levels, the Executive must consider:

[(1) the price established for the sale or rental of MPDUs under this Chapter,]

[(2)] (1) the term and interest rate that applies to the financing of MPDUs,

[(3)] (2) the estimated levels of income necessary to carry a mortgage on an MPDU, and

[(4) family] (3) household size and number of dependents.

\* \* \*

#### **25A-5. Requirement to build MPDU's; agreements.**

\* \* \*

(b) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:



\* \* \*

(3) in [multi-family] multiple-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

(4) The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU, or that does not meet minimum specifications for MPDUs established by regulation from time to time.

\* \* \*

(e) The Director may approve an MPDU agreement that[:]

[(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or]

(2)] allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section [25A-5B] 25A-5A.

\* \* \*

(f) \* \* \*

(3) Notwithstanding any other provisions of [the] this subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. [Any rejection and the

reasons for the rejection may be considered by the] The  
 Planning Board or the Director of Permitting Services may  
consider any rejection and the reasons for it in deciding whether  
 to grant [the applicant] a waiver [of this Chapter] under Section  
 [25A-7(b)] 25A-6(b).

(4) Any transfer of land to the County [hereunder] under this  
subsection is not subject to [Section 11B-33] Chapter 11B, and  
 any land so transferred is not property subject to [Section 11B-  
 31A] Chapter 11B regulating the disposal of surplus land. The  
 Director may dispose of the [lots] land in a manner that furthers  
 the objectives of this Chapter.

\* \* \*

(k) The applicant must execute and [record] cause to be recorded  
 covenants assuring that:

\* \* \*

(l) (1) In any purchase and sale agreement and any deed or instrument  
 conveying title to an MPDU, the grantor must clearly and  
 conspicuously state, and the grantee must clearly and conspicuously  
 acknowledge, that:

(A) the conveyed property is [a] an MPDU and is subject to  
 the restrictions contained in the covenants required under  
 this Chapter during the control period until the  
 restrictions are released; and

\* \* \*

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by [state] State law.

(m) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. Sections 25A-5A[, 25A-5B,] and 25A-6(b) do not apply to an applicant who voluntarily builds MPDU[']s under this subsection and in so doing qualifies for an optional method of development.

**[25A-5A. Alternative payment agreement.]**

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required number of MPDUs in the proposed subdivision, to pay to the Housing Initiative Fund an amount computed under subsection (b), only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Director of Park and Planning, or their respective designees, by majority vote finds that:

(1) either:

(A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; or

(B) environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible; and

(2) the public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the County, and accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

(b) Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.

(c) Any payment to the Housing Initiative Fund under this Section may be used only to buy or build more MPDUs in the same planning policy area (as defined in the County Growth Policy) as the development for which the payment was made, and must not be used to reduce the annual County payment to the Fund.

- (d) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.]

**[25A-5B.] 25A-5A. Alternative location agreement.**

- (a) The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of MPDUs [on-site,] within the boundaries of the project plan, preliminary plan, or site plan for the development, to provide [at least the same number of] MPDUs at another location in the same planning or policy area, only if the Director finds that:

[(1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.]

(1) the applicant has agreed to provide a number of MPDUs equal to at least 20 percent of the approved units in the high-rise building;

(2) no more than 30 percent of the number of units at the proposed alternative location will be MPDUs; and

(3) the MPDUs at the proposed alternative location have at least as many bedrooms as would have been required under Section

25A-5(b)(3) if all MPDUs had been located on the site of the high-rise building.

\* \* \*

**25A-6. Optional zoning provisions; waiver of requirements.**

\* \* \*

(b) *Waiver of requirements.* Any applicant who presents sufficient evidence to the Director of Permitting Services in applying for a building permit, or to the Planning Board in submitting a preliminary plan of subdivision for approval or requesting approval of a site or other development plan, may be granted a waiver from part or all of Section 25A-5. The waiver must relate only to the number of MPDUs to be built, and may be granted only if the Director of Permitting Services or the Board[, after consulting with the Department of Housing and Community Development Affairs,] finds that the applicant cannot attain the full density of the zone because of any requirements of [the zoning ordinance] Chapter 59 or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds [for waiving the] to waive any MPDU [requirements] requirement. Any waiver must be strictly construed and limited.

**25A-7. Maximum prices and rents.**

Moderately priced dwelling units must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this Section.

(a) *Sales.*

[(1)] The sale price of any MPDU, [including closing costs and brokerage fees,] including any closing costs paid by the builder, must not exceed an applicable maximum sale price established from time to time [by the County Executive in regulations adopted under method (1)] in accordance with Executive regulations.

[(2)] The County Executive in issuing MPDU sale price regulations must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the County, and must consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The County Executive must, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The County Executive must also consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.

(3) The County Executive must issue maximum sale prices for MPDUs which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPDUs by private industry. The sale prices

for any succeeding year must be based on a new finding of cost by the County Executive, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(4) The County Executive may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on the maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(5) If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Director, under executive regulations, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

(6) The Director may let an applicant increase the sale price of a MPDU when the Director, under executive regulations, finds in exceptional cases that a price increase is justified to cover the cost of modifying the external design of the MPDUs when a modification is necessary to reduce excessive marketing impact of the MPDUs on the market rate units in the subdivision. The Director must approve the amount of any increase for this



purpose, which must not exceed 10 percent of the allowable base price of the unit.]

(b) *Rents.*

[(1)] The rent, [including parking but] excluding utilities and parking when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the dwelling unit set [by] in accordance with Executive regulations. Different rents must be set for units when utility costs are paid by the owner and included in the rent. Different rents may be set for age-restricted units. [Different rents also may be set for high-rise rental units, but those rents must not apply unless the Director finds that no other reasonable means is available to finance the building of all required MPDUs at a specific development.]

[(2)] The County Executive, in setting the maximum rent, must consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return or investments in residential rental properties, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The County Executive must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The County Executive must consider the extent to which, consistent with County codes and housing

standards, the cost of rental housing can be reduced by the elimination of amenities. The County Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing.]

**25A-8. Sale or rental of units.**

*(a) Sale or rental to general public.*

(1) [Every] During the priority marketing period, every moderately priced dwelling unit required under this Chapter must be offered to [the general public for sale or rental to a good-faith purchaser] an eligible buyer or renter to be used for his or her own residence, except units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations, [adopted by the County Executive under method (1)] whose purpose is to provide housing for persons of low or moderate income.

(2) Before offering any moderately priced dwelling units, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible [persons] buyers or renters. The notice must [set forth] specify the number of units offered, the bedroom mix, the floor area for each unit type, [a description of] the amenities offered in each unit, and [a statement of] the availability of each unit for sale or rent, including information

392 regarding any mortgage financing available to buyers of the  
393 designated unit. The applicant must also give the Department a  
394 vicinity map of the offering, a copy of the approved  
395 development, subdivision or site plan, as appropriate, and such  
396 other information or documents as the Director finds necessary.  
397 The Department must maintain a list of eligible [persons]  
398 buyers of moderate income and, in accordance with procedures  
399 established by the County Executive, must [notify eligible  
400 persons] post a notice of the offering for eligible buyers and  
401 renters.

402 (3) After receiving the offering notice, the Department must notify  
403 the Commission of the offering. If the Department finds that  
404 the offering notice is complete, it must decide whether the  
405 offering of the units to eligible [persons] buyers or renters will  
406 be administered by [lottery] random selection drawing or by  
407 another method that will assure eligible [persons] buyers or  
408 renters an equitable opportunity to buy or rent [a] an MPDU.  
409 The Department must notify the applicant of the method and  
410 when the 90-day priority marketing period for the MPDUs may  
411 begin.

412 (4) The Executive may by regulation establish a buyer [and renter]  
413 selection system which considers household size, County  
414 residency, employment in the County, and length of time since  
415 the person was certified for the MPDU program. Each eligible  
416 [person] buyer must be [notified of the availability of any  
417 MPDU which would meet that person's housing needs, and be]

given an opportunity to buy [or rent] an MPDU during the priority marketing period in the order of that person's selection priority ranking.

(5) The priority marketing period for new units ends 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented units ends 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible [persons] buyers or renters are interested in buying or renting a unit.

(6) [Moderately priced dwelling units] MPDUs, except those built, sold, or rented under a federal, state, or local program designated by regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

\* \* \*

(D) [Applicants] Each applicant must make a good-faith effort to enter into contracts with eligible [persons] buyers or renters during the priority marketing period and for an additional period necessary to negotiate with eligible [persons] buyers or renters who indicate a desire to buy or rent an MPDU during that period.

(7) Every buyer or renter of an MPDU must occupy the unit as his or her primary residence during the control period. Each buyer

and renter must certify before taking occupancy that he or she will occupy the unit as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit for resale to an eligible [person] buyer under [the resale provisions of Section 25A-9] Section 25A-10.

\* \* \*

(10) [An] During the priority marketing period, an applicant must not sell [or lease] any unit without first obtaining a certificate of eligibility from the buyer [or lessee]. A copy of each certificate must be furnished to the Department and maintained on file by the Department. The Director may waive this requirement in an age-restricted development for good cause. Before the sale by an applicant or by the Commission or a designated housing agency or nonprofit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency or corporation must ask the Department whether the certificates on file show that the proposed buyer had previously bought another MPDU. A person who previously bought and owned an MPDU must not buy a second MPDU unless no first-time buyer is qualified to buy that unit. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this Section, or the

owner of record must sell the MPDU as provided in Section 25A-9. After the control period expires, the owner of record must comply with Section 25A-9(c).

(b) *Sale or rental to government agencies or nonprofit corporations.*

(1) In view of the critical, long-term public need for housing for [families] households of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive, may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease:

(A) any MPDU in the first 33 percent that HOC has not bought or leased, and

(B) the remainder of the 40 percent.

This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations [adopted by the Executive]. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to

demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

- (2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under this subsection [(b)], a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible [persons] buyers or renters [under subsection (b)] during the priority marketing period for eligible [persons] buyers or renters to buy or lease.

\* \* \*

**25A-9. Control of rents and resale prices; foreclosures.**

- (a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this Chapter must not be resold or refinanced during the control period for a price greater than the original [selling] purchase price plus:

- (1) A percentage of the unit's original [selling] purchase price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

- 517           (2)   The [fair market value] documented cost of improvements  
 518                   made to the unit between the date of original [sale] purchase  
 519                   and the date of resale;
- 520           (3)   An allowance for closing costs which were not paid by the  
 521                   initial seller, but which will be paid by the initial buyer for the  
 522                   benefit of the later buyer; and
- 523           (4)   A reasonable sales commission if [the unit is not sold during the  
 524                   priority marketing period to an eligible person from the  
 525                   Department's eligibility list] a third-party licensed real estate  
 526                   agent is used.

527           The resale price of an MPDU may be reduced if the physical  
 528                   condition of the unit reflects abnormal wear and tear because of  
 529                   neglect, abuse, or insufficient maintenance. Any personal property  
 530                   transferred in connection with the resale of an MPDU must be sold at  
 531                   its fair market value. In calculating the allowable resale price of an  
 532                   MPDU which was originally offered for rent, the Department must  
 533                   [estimate the price for which the unit would have been sold if the unit  
 534                   had been offered for sale when it was first rented] calculate the current  
 535                   affordable sales price as defined under Section 25A-7(a).

536           (b)   *Resale requirements during the control period.*

- 537           (1)   Any MPDU offered for resale during the control period must  
 538                   first be offered exclusively for up to 60 days to the Department  
 539                   and the Commission, in that order. The Department or the  
 540                   Commission may buy a unit when funds are available. The  
 541                   Department may buy a unit when the Director finds that the



Department's or a designated agency or corporation's buying and reselling the unit will increase opportunities for eligible [persons] buyers to buy the unit. If the Department or the Commission does not buy the unit, the Department must [notify eligible persons of the availability of a resale MPDU] post a notice for eligible buyers of the availability of a resale MPDU. The unit may be sold through either of the following methods:

(A) The Department may by [lottery] random selection drawing establish a priority order under which eligible [persons] buyers who express interest in buying the unit may buy it at the approved resale price.

(B) The Department may notify the MPDU owner that the owner may sell the unit directly to any eligible [person] buyer under the resale provisions of this Chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

\* \* \*

(B) all eligible [persons] buyers who express an interest in buying it have been given an opportunity to do so.

(3) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

\* \* \*

(B) a signed copy of the settlement sheet; [and]

(C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale[.];  
and

(D) an affidavit signed by the buyer agreeing to comply with all requirements of this Chapter.

\* \* \*

(c) *First sale after control period ends.*

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total [resale] fair market sales price over the sum of the following:

(A) The original [selling] purchase price;

(B) A percentage of the unit's original [selling] purchase price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index; and

(C) The [fair market value] documented cost of capital improvements made to the unit between the date of original [sale] purchase and the date of resale; and

(D) A reasonable sales commission if a third-party licensed real estate agent was used.

(2) The Director must adjust the amount paid into the fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in subsection (c)(1)(A)-(D).

[(2)] (3) The Director must find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

[(3)] (4) The Department and the Commission, in that order, may buy an MPDU at any time during the control period, and may resell the unit to an eligible [person] buyer. A resale by the Department or Commission starts a new control period.

[(4)] (5) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells.

(d) *Initial and later rent controls.* Unless previously sold under subsection (c)(1), [MPDUs] any MPDU built or offered for rent under this Chapter must not be rented for 99 years after the original rental at a rent greater than that established by [Executive regulations] regulation. Any MPDU (other than those built, sold, or rented under

any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible [persons] renters, as determined by the Department, for use as that person's residence, and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified [in Executive regulations] by regulation.

(e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and [liens filed under the Maryland Contract Lien Act] tax liens or other liens superior to the foreclosed lien, must be paid to the Housing Initiative Fund. [If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.]

\* \* \*

(3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the [maximum sales price

in effect when the unit was originally offered for rent] current  
affordable sales price as defined under Section 25A-7(a).

\* \* \*

(f) *Waivers.* The Director may waive the restrictions on the resale and rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible [persons] buyers or renters from buying or renting units under the MPDU program.

(g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

\* \* \*

**25A-10. [Executive regulations] Regulations; enforcement.**

(a) The Department must maintain a list of all moderately priced dwelling units constructed, sold or rented under this Chapter. [; and the] The County Executive may, from time to time, adopt regulations under method [(1) necessary] (2) to administer this Chapter.

\* \* \*

(e) In addition to or instead of any other available remedy, the Director may take legal action to:

\* \* \*

(2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to the County, the Commission, or an eligible [person] buyer.

**25A-12. Annual report.**

Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

- (a) the number of MPDUs approved and built; and
- (b) each [alternative payment agreement approved under Section 25A-5A or] alternative location agreement approved under [Section 25A-5B,] Section 25A-5A, and the location and number of MPDUs that were involved in each agreement[;].
- [(c) each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1); and
- (d) the use of all funds in the Housing Initiative Fund that were received as a payment under Section 25A-5A.]

*Approved:*

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Michael J. Knapp, President, County Council Date

*Approved:*

---

Isiah Leggett, County Executive Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

### Bill 38-07

#### *Moderately Priced Housing – Amendments.*

|   |  |
|---|--|
| <b>DESCRIPTION:</b>                       | Modify pricing of sale MPDUs; eliminate the option of allowing payments into the Housing Initiative Fund (“buy-outs”) in lieu of building MPDUs; and generally amend the law governing the moderately priced dwelling unit program.                          |
| <b>PROBLEM:</b>                           | As documented in Report Number 2007-9 by the Office of Legislative Oversight, the current practice of basing MPDU sale prices on unit construction costs is resulting in an increasing number of sale MPDUs that are not affordable to program participants. |
| <b>GOALS AND OBJECTIVES:</b>              | Ensure that future MPDU program participants will be able to afford to buy MPDUs by changing the pricing of sale units to reflect affordability to program participants. Mandate that all required MPDUs are built, rather than allowing in-lieu payments.   |
| <b>COORDINATION:</b>                      | Department of Housing and Community Affairs, Planning Board  |
| <b>FISCAL IMPACT:</b>                     | To be requested.   |
| <b>ECONOMIC IMPACT:</b>                   | To be requested.   |
| <b>EVALUATION:</b>                        | To be requested.   |
| <b>EXPERIENCE ELSEWHERE:</b>              | To be researched.  |
| <b>SOURCE OF INFORMATION:</b>             | Joe Giloley, Chief, Division of Housing and Code Enforcement, Department of Housing and Community Affairs  |
| <b>APPLICATION WITHIN MUNICIPALITIES:</b> | Applies to County MPDU program.  |
| <b>PENALTIES:</b>                         | No new penalties established.  |




OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

November 29, 2007

TO: Marilyn J. Praisner, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Amendments to Chapter 25A, Moderately Priced Housing, Montgomery County Code, to Implement Changes in Pricing of MPDU Sales Units

Attached for the County Council's consideration are amendments to Chapter 25A of the Montgomery County Code, 2004, as amended (Moderately Priced Housing Law). The primary purpose of this legislation is to change the method of pricing Moderately Priced Dwelling Units (MPDUs) so that sale prices are based on affordability to program participants rather than unit construction costs. This change implements the key recommendation of the recent report by the Office of Legislative Oversight, and is necessary in order to ensure that MPDUs remain affordable to income-eligible households. The bill also incorporates one of the changes proposed by Bill No. 13-07, introduced by Councilmember Leventhal on June 26, 2007, which is to eliminate the option of allowing developers to pay into the Housing Initiative Fund in lieu of building some or all of the required MPDUs in a subdivision. DHCA further recommends that the Alternative Review Committee (ARC) be eliminated altogether; however, this will require amendments to Section 59-D-1.61(a) of the Montgomery County Zoning Code and Section 50-35(I), Subdivision of Land, of the Montgomery County Code, 2004, as amended. DHCA staff will coordinate with Council staff to develop these amendments.

Other changes made to Chapter 25A by the attached bill include:

- eliminating the practice of allowing MPDU rents in high-rise buildings to be set higher than those in other types of rental housing;
- changing the section on Alternative Location Agreements to provide objective standards for approval of these agreements and to clarify the section's requirements; and
- generally updating the law to improve efficiency and reflect current practices.

A copy of the proposed bill and a Legislative Request Report are attached.

IL:lss

Attachments